IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

Crl.Rev.Pet.No. 3411 of 2007()

CRA.518/2006 of SESSIONS COURT, KOZHIKOE
CC.58/2005 of JUDL.MAGISTRATE OF FIRST CLASS, PAYYOLI

REVN. PETITIONERS: APPELLANTS/ACCUSED NOS.1 TO 3 AND 5 TO 7

1. KUMARAN, S/O.KORAVAN,
   AGED 42 YEARS, KIZHAKKEKUNI HOUSE,
   MOODADI AMSOM, CHINGAPURAM, MUCHUKUNNE DESOM.

2. MADHAVAN, S/O.KORAVAN,
   AGED 33 YEARS,KIZHAKEKUNI HOUSE,
   MOODADI AMSOM, CHINGAPURAM, MUCHUKUNNE DESOM.

3. BIJU, S/O.AYYAPPAN,
   AGED 24 YEARS, VAZHAYIL HOUSE,
   MOODADI AMSOM, MUCHUKUNNE DESOM.

4. VINODHAN, S/O.GOPALAN,
   AGED 34 YEARS, VAZHAYIL MEETHAL HOUSE,
   MOODADI AMSOM, MUCHUKUNNE DESOM.

5. VINU, S/O.AYYAPPAN,
   AGED 24 YEARS, VAZHAYIL HOUSE,
   MOODADI AMSOM, MUCHUKUNNE DESOM.

6. PAVITHRAN, S/O.BALAN,
   AGED 25 YEARS, KOYIKKAMBATH MEETHAL HOUSE,
   MOODADI AMSOM, MUCHUKUNNE DESOM.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: RESPONDENT/RESPONDENT/COMPLAINANT

STATE OF KERALA THROUGH THE
SUB INSPECTOR OF POLICE,
PAYYOLI POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

==========

CRL. R.P. NO. 3411 OF 2007

==========

Dated this the 24th day of September, 2007.

ORDER

The revision petitioners, who are accused Nos. 1 to 3 and 5 to 7 in C.C No.58/2005 on the file of Judicial First Class Magistrate, Payyoli, challenge their conviction and sentence under Sections 143, 148, 452, 323 and 324 r/w Section 149 of the Indian Penal Code.

2. The case of the prosecution can be summarised as follows:

On 29.07.2004 at 6.30 a.m, the 17 accused persons, out of their enemity towards PWs 1 to 3, formed themselves into an unlawful assembly, armed with deadly weapons like iron rod, knife, stick and iron block, in prosecution of their common object trespassed into the house of PWs 1 to 4 at Thikkodi Panchayath. The 2nd accused stabbed on PW2's head with a knife. The 1st accused hit PWs 1 and 3 with an iron rod. The 1st accused had also dragged PW4 from the varandha to the courtyard and the rest of the accused hit PWs 1 to 3 with sticks and bare hands resulting in PWs 1 to 4 sustaining injuries.

3. The prosecution altogether examined 13 witnesses as PWs 1 to 13 and got marked 11 documents as Exts.P1 to P11 and three material objects as MOs 1 to 3.

4. The persons who stood trial were A1 to A3, A5 to A7(revision petitioners herein) and A8 to A17.

5. The accused denied the incriminating circumstances put to them in the evidence of the prosecution and maintained their innocence.

6. When called upon to do so, the accused examined two witnesses as DWs 1 and 2 and got marked Ext.D1, copy of the wound certificate.

7. The learned Magistrate after trial, as per judgment dated 31.07.2006 found all the accused persons guilty of the offences punishable under Sections 143, 148, 452, 323 and 324 r/w Section 149 IPC. For the conviction under Section 143 IPC, each of the convicted person was sentenced to simple imprisonment for three months. For the conviction under Section 148 IPC, they were each sentenced to simple imprisonment for a period of six months. For the offence under Section 452 IPC, they were each sentenced to simple imprisonment for one year. For the offence under Section 323 IPC, they were each sentenced to simple imprisonment for six months and for the offence under Section 324 IPC, each of them was sentenced to pay a fine of Rs.1,000/-.

8. Even though the accused persons prefered an appeal before

the Sessions Court, Kozhikode as Crl.Appeal No. 518/2006, the appeallte Court confirmed the conviction and sentence passed by the trial Court except in the case of accused Nos. 3 to 5 and 7 who were acquitted of the offence punishable under Section 148 IPC on the finding that they were not armed with any weapons. Since the accused has died pending trial the charge against him had abated.

9. The learned counsel for the revision petitioners assailed the conviction recorded as above against the revision petitioners. But the courts below have recorded the conviction after a careful evaluation of the oral evidence of PW1 to 4 who are the eye witnesses and also after the careful consideration of the oral and documentary evidence adduced by the prosecution. The appellate court also considered the oral and documentary evidence before recording the conviction as stated above. In the absence of any infirmity in the appreciation of the evidence by the court below, this Court sitting in revision will be loath to interfere with the said conviction which is accordingly confirmed.

10. What now remains to be considered is the question regarding the adequacy of the sentence imposed on the revision petitioners. The motive for the occurrence was the alleged quarrel by A7 with the defacto complainant (PW1) at a marriage ceremony.

Impelled by the said motive, the accused were allegedly barging into the house of PWs 1 to 4 . However, having regard to the facts and circumstances of the case, I do not think that the revision petitioners deserve penal servitude by way of incarceration. I am of the view that the interests of justice will be adequately met by imposing a proper fine with a direction to compensate the injured. Accordingly, the sentence imposed on the revision petitioners is set aside and each of them is sentenced to pay a fine of Rs.3,000/- under Section 143 IPC and in default to pay a fine to suffer simple imprisonment for 20 days, to undergo imprisonment till the rising of the court and to pay a fine of Rs.5,000/- under Section 452 and on default to pay the fine, to suffer simple imprisonment for one month, to pay a fine of Rs.1,000/- under Section 323 and on default to pay the fine, to suffer simple imprisonment for 15 days, to pay a fine of Rs.4,000/- under Section 324 and on default to pay the fine, to suffer simple imprisonment for one month. For the conviction under Section 148 IPC, accused Nos. 1,2 and 6 are each sentenced to pay a fine of Rs.3,000/- and on default to pay the fine to suffer simple imprisonment for one month. From out of the fine a sum of Rs.15,000/- shall be paid to PW1 by way of compensation under Section 357(1) Crl. P.C. A sum of Rs. 5,000/- shall be paid to PWs 2,3 and 4 each as compensation under Section

357(1) Crl. P.C. The fine amount shall be deposited within two months from today. Until then non bailable warrants, if any, issued against the revision petitioner, shall not be executed.

The Crl. R.P is disposed of accordingly.

V. RAMKUMAR, JUDGE.

rv